

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)	
)	
JOHN CHARLES COGLEY,)	CASE NO. 05-68346 JPK
)	Chapter 7
Debtor.)	
*****)	
KENNETH A. MANNING,)	
)	
Plaintiff,)	
)	
v.)	ADVERSARY NO. 06-6133
)	
INDIANAPOLIS LIFE INSURANCE)	
COMPANY, LAURA JEAN COGLEY))	
DANIEL L. FREELAND, HEATHER))	
BROOK AND FIRST STATE BANK))	
OF PORTER,)	
)	
Defendants.)	

ORDER DENYING MOTION TO SET ASIDE ORDER
STRIKING PLEADING

On June 27, 2006, the Court entered an order striking the defendant's, First State Bank of Porter, Answer to Adversary Complaint filed on May 25, 2006, due to non-compliance with the Court's order entered on May 25, 2006 which required that party's counsel Daniel O'Meara to file a written appearance in the adversary proceeding pursuant to the requirements of N.D.Ind.L.B.R. B-9010-2. The Court's records establish that electronic notice of the May 25, 2006 order was provided to Attorney O'Meara. On June 29, 2006, Attorney O'Meara filed a Motion to Set Aside Order Striking Pleading.

First, the motion fails to state the statute or rule upon which it is premised. Although the motion would appear to be based upon Fed.R.Bankr.P. 9024/Fed.R.Civ.P. 60(b), this conclusion is totally a surmise on the part of the Court. Additionally – although this Court does not strictly enforce the requirement provided by the Local Rules of the United States Bankruptcy Court for the Northern District of Indiana – N.D.Ind.L.B.R. B-9023-1(a) provides that motions

filed pursuant to Fed.R.Bankr.P. 9023 or Fed.R.Bankr.P. 9024 are to "be accompanied by a separate supporting brief and any appropriate affidavits or other materials in support thereof". The motion was not accompanied by a separate supporting brief as required by that rule.

Most annoyingly, despite having been advised of the need to file an appearance in this case, Attorney O'Meara has still not complied with the requirements of N.D.Ind.L.B.R. B-9010-2(a). It is incredible to the Court that an attorney who seeks to set aside an order based upon his failure to comply with a rule, has filed a motion which seeks to set that order aside, and yet still has failed to comply with the rule upon which the original order was based.

The Court finds that the foregoing Motion fails to state any grounds upon which any relief potentially sought by it may be granted, and that the Motion should be denied.

IT IS ORDERED that the Motion to Set Aside Order Striking Pleading filed by Attorney Daniel O'Meara on behalf of First State Bank of Porter on June 29, 2006 is denied.

IT IS FURTHER ORDERED that the denial of the foregoing Motion is without prejudice to the defendant's filing of an answer or other response to the complaint in accordance with applicable rules; provided, however, that any issues regarding the untimeliness of any such answer or other response are not foreclosed by this order.

Dated at Hammond, Indiana on July 10, 2006.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Attorneys of Record